No. 87-456

Supreme Court, U.S.
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In The
# Supreme Court of the United States
October Term, 1987

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MAUDE CLEVENGER SIM,

*Appellant,*

v.

OPAL C. COMISKEY and EDITH R. WRIGHT, ALAN M. WOOD, ROBERT M. SPIRE, Attorney General of Nebraska,

*Appellees.*

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## RESPONSE TO JURISDICTIONAL STATEMENT

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## QUESTION PRESENTED

The question presented in appellant's brief appears to be whether an individual, even if incompetent, may establish a trust to take care of him or herself and provide that the trust instrument and the trustee thereof not come under court scrutiny for any reason during the lifetime of the individual if not longer.

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## JURISDICTIONAL STATEMENT

Appellant has apparently sought review of the guardianship and conservatorship statutes of the State of Nebraska based on the allegation that they deny equal protection and due process as it relates to liberty, property, and privacy. State of Nebraska as amicus curiae alleges that the issues as addressed by the appellant do not present a significant federal question for review by this Court.

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## CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

Appellant is apparently alleging that Mrs. Sim's rights to due process under the Fifth and Fourteenth Amendments to the Constitution of the United States have been violated and that her right to equal protection under the Fourteenth Amendment to the Constitution of the United States has been violated. Statutes involved are the guardianship and conservatorship statutes of the State of Nebraska, Neb.Rev.Stat. §§ 30-2617 through 30-2661.

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## PROPOSITION OF LAW

THE STATE HAS A LEGITIMATE INTEREST IN ASSERTING ITS PARENS PATRIAE POWERS TO PROVIDE CARE FOR ITS CITIZENS WHO ARE UNABLE TO CARE FOR THEMSELVES.

*Addington v. Texas*, 441 U.S. 418 (1978)

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## ARGUMENT

### APPELLANT HAS FAILED TO STATE A SUBSTANTIAL FEDERAL QUESTION FOR THIS COURT.

Appellant is alleging that the guardianship and conservatorship statutes of the State of Nebraska are unconstitutional in that they are in violation of her constitutional right to equal protection and due process as it relates to privacy, liberty, and property interests. The State of Nebraska as amicus curiae moves this court to dismiss this appeal in that it does not present a substantial federal question.

The majority of appellant's allegations are that the Nebraska Guardianship and Conservatorship statutes are unconstitutional because Mrs. Sim has a right to establish her own irrevocable trust in order to care for herself in her old age. While appellant attacks the constitutionality of Nebraska statutes, his real concern seems to be whether the appointment of a guardian/conservator for Mrs. Sim is appropriate in the instant case.

Mrs. Sim's liberty interest as presented by appellant's brief has never been an issue in this case. Mrs. Sim apparently placed herself in a nursing home and there is no indication that appellees, her half-sisters, or the State of Nebraska as amicus curiae have attempted to change her living arrangements or to deprive her of her liberty in any way. This is not and never has been a proceeding for commitment.

While appellant alleges a denial of equal protection, there is nothing to indicate how Mrs. Sim has been discriminated against. Equal protection does not mandate

that a state choose between attacking each and every aspect of a problem or not addressing the situation at all. It merely requires that the state's action be rationally based and free from invidious discrimination. *Dandridge v. Williams*, 397 U.S. 471 (1970). The statutes addressing guardians and conservators of person under disability apply equally to each individual who, by reason of any disability enumerated in Neb.Rev.Stat. § 30-2601 (Reissue 1979), is not capable of managing his or her affairs. The amended statutes do not apply to arbitrarily selected individuals or classes of people, but rather, they apply equally to all people under similar circumstances and conditions. People may not be said to be deprived of the equal protection of the law where all persons who are similarly situated are treated alike under the law. *Louisville Gas and Electric Co. v. Coleman*, 277 U.S. 32 (1928); *Caldwell v. Texas*, 137 U.S. 692 (1890).

The questions presented to the state courts were whether Mrs. Sim is able to both mentally and physically care for herself, whether she was mentally competent when she allegedly executed the alleged trust and whether the alleged trust does indeed provide for her. Counsel for Mrs. Sim has raised constitutional objections from the beginning of litigation as to any determination of her competency and has refused from the beginning of litigation to allow the court to view or have an accounting of the alleged trust instrument for which he is trustee. It is well established that the state has a legitimate interest in asserting its parens patriae powers to provide care for its citizens who are unable to care for themselves. *See, Addington v. Texas*, 441 U.S. 418 (1978); *O'Connor v. Donaldson*, 422 U.S. 563 (1974).

Mrs. Sim's half-sisters originally brought this action for appointment of a guardian-conservator for their sister. Following initiation of the proceedings, Mrs. Sim's long-time family attorney alleged that she had executed an irrevocable trust that would care for her for the rest of her life, thus obviating the need for guardianship/conservatorship proceedings. The same attorney along with his son and one other attorney were apparently trustees for Mrs. Sim's trust. Said trust document has never been presented for judicial review based on a claim that to do so would violate Mrs. Sim's constitutional right to privacy. The county court had appointed a guardian/conservator with the limited authority to monitor Mrs. Sim's condition and to obtain a copy of the power of attorney and trust agreement purportedly entered into by Mrs. Sim. Mrs. Sim has been represented by both private counsel in the form of her long time attorney and alleged trustee of her estate as well as a guardian/conservator appointed by the court. The Nebraska Supreme Court held that the guardianship and conservatorship statutes were constitutional and affirmed the order of the county court which appointed the guardian/conservator.

As cited by appellant, there is no need to place Mrs. Sim under guardianship if she has established a trust that obviates the need for a guardianship/conservatorship. The Nebraska Supreme Court distinguished this case from *Matter of Forward*, 86 A.D.2d 850, 447 N.Y.S.2d 286 (1982), not as alleged by appellant because the trustee in *Forward* was a corporation and the trustee in this case is a private attorney. The Nebraska Supreme Court noted first that "since the *Forward* court was able to describe the trust provisions, we must conclude that the court had the trust

before it. In the present case we have before us only the drafter's representations concerning the existence of certain selected terms of the trust." *In Re Guardianship and Conservatorship of Sim*, 225 Neb. 181 at 192, 403 N.W.2d 721 (1987), contrary to appellant's contentions, the State of Nebraska has never alleged that the trust document does not work because the state has never seen the document and entered this case only to address the constitutionality of Nebraska guardianship and conservatorship statutes.

The actions of the state court in attempting to determine the competency of Mrs. Sim at the current time as well as at the time the trust instrument was entered into, and to determine that the trust instrument is in her best interest are well within the established parens patriae powers of the state. If at some time in the future the guardian/conservator appointed by the court attempts to void the trust document allegedly entered into by Mrs. Sim, then at that time Mrs. Sim may have a constitutional question to take to the courts regarding her right to privacy and due process regarding her rights to own, manage and dispose of her property. There currently does not exist a significant federal question for this court to determine.

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## CONCLUSION

The state has a legitimate interest in asserting its parens patriae powers to provide for its citizens and appellant has cited to nothing in particular about the state statutes regarding guardianship and conservatorship as

they have currently been applied to Mrs. Sim which is in any way in violation of the Constitution of the United States. Therefore, the State of Nebraska respectfully requests that this Court deny jurisdiction to this case.

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